



State of Wisconsin  
Tommy G. Thompson, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

September 8, 2000

Mississippi River/Gulf of Mexico Nutrient Task Force  
Mississippi River/Gulf of Mexico Action Plan (4503F),  
c/o John Wilson, U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Subject: Draft Action Plan Comments**

Dear Members of the Mississippi River/Gulf of Mexico Nutrient Task Force,

The Wisconsin Department of Agriculture, Trade and Consumer recognizes that many dedicated persons have worked hard to prepare the draft action plan to address the problem of hypoxia in the northern Gulf of Mexico. While there are areas of the plan that we support, there are a number of areas that we have serious concerns about. It appears that major requirements of the authorizing Public Law 105-383 have not been met. Given this inadequacy and highly-controversial aspects of certain areas of the draft plan, we recommend that the Task Force ask Congress for at least a two-year extension to complete the plan. We will ask our congressional delegation to support any needed legislation to enable that request. We believe that the natural resources of the Mississippi River/Atchafalaya Basin and the Gulf of Mexico and citizens will be best served by a plan of action that has had adequate time for careful consideration and full input from the private and non-profit sectors as well as the public sector. Our specific concerns are listed below.

1. **We strongly feel that additional time is needed in order to be able to fully engage all groups identified in Section 605 (b) to develop a plan for reducing, mitigating, and controlling hypoxia.** While we appreciate the need for the Task Force to limit its membership numbers to a workable size, it is clear that agriculture, industry, local government, and environmental groups have not yet been included to the extent that they need to be in the development of the plan. The 60-day comment period provided for this draft action plan is no substitute for the level of communication and coordination that is required to have meaningful dialogue among all the aforementioned groups to develop the incentive-based, partnership approach envisioned by Congress.
2. **The assessment of the social and economic costs and benefits of the measures for reducing, mitigating and controlling hypoxia that the law requires for the draft action plan is absent entirely.** The plan proposes various responsibilities for private citizens and private business, states and tribes, and federal agencies, along with a list of short-term

implementation actions, which is based on a numeric reduction goal. However, there is no mention of the cost of carrying out these responsibilities or implementation actions, or who would pay the costs, which suggests the potential for unfunded federal mandates. Further, the potential impacts and costs to local governments were not addressed. The economic assessment prepared for the integrated assessment does not address these costs, and further does not establish a cost/benefit that would warrant the proposed numeric reduction goals for nitrogen. In any case, the social and economic assessment for the action plan needs to be developed jointly between the federal, state, and tribal governments, and affected agriculture, industry, local government, and environmental groups, as these groups work with government and academia to develop an incentive-based partnership approach.

3. **The plan has not been developed in conjunction with state chief executive officers, as required by Section 604 (b) of the law.** As noted in the previous point, the plan would have States and Tribes assume a number of increased responsibilities and associated workload, yet they have no idea of the additional associated costs or who would pay. And, additional state legislation may be needed to even allow states to take on these responsibilities and to carryout implementation actions. It is essential that the plan be modified to one which state agricultural agencies, as well as state water quality agencies, can support, so that their state's chief executive officers can support both agencies needs at their respective state legislatures and any budget requests to Congress.
4. **The "incentive-based partnership approaches" specified in the law is largely absent in the plan.** The plan instead focuses on a top-down approach of revising state water quality standards according to numeric reduction goals which have not been agreed to, and then increasing reliance on regulatory approaches via the "total maximum daily load" (TMDL) and NPDES rules to implement the new standards.
5. **We are opposed to agreeing to any kind of numeric reduction goals, and support the long term goal option 1C, modified as follows: to protect the ecological and fisheries resources of the northern Gulf of Mexico from nutrient over-enrichment, by promoting incentive-based partnerships among all states and tribes within the basin that pursue practical, voluntary, cost-effective measures among all categories of pollutant sources.** We are very concerned that the draft action plan is based on an integrated assessment that contains too many unknowns or items in dispute regarding the complex causes of and remedial measures for abating hypoxia. Hypoxia is a complex phenomenon that is apparently principally driven by over-enrichment of near-shore waters by nitrogen, but it is not clear whether it is the level of nitrate delivered in the spring flush of runoff, or whether it is due to annual loadings of total nitrogen. This question must be resolved before specific management measures or numeric goals for nitrogen can be considered and prioritized.
6. **The plan does not adequately address the role of fresh water flux and water quantity managment.** Hypoxia is apparently also dependent on stratification of fresh-water over salt water. The flux of fresh water in conjunction with the flux of nitrogen is therefore an essential factor in the development and areal extent of hypoxia. The integrated assessment

acknowledges that fresh water flux has significantly increased by about 30 percent in recent history, compared to earlier periods. Yet the integrated assessment and action plan do not, beyond cursory references, examine possible management measures for water quantity as well as water quality issues. Indeed, the proposal to promote the use of centralized sewage treatment plants may work at cross-purposes, by exporting even more groundwater withdrawals for urban uses ultimately into the Gulf of Mexico. This would result in adding to the annual flux of fresh water to the Gulf, and possibly adding to the nitrogen flux as well. We believe the adaptive management concept could be applied to urban runoff and municipal sewage treatment plants, to develop a plan to enhance recycling of groundwater and infiltration of rainwater within the region. Water infiltration and flood storage are also of interest to agriculture, and warrant consideration and funding assistance.

7. **We are opposed to the expansion of existing regulatory programs such as TMDLs, AFO/CAFO, and NPDES permits, or the creation of new regulatory programs, based on the needs for the Gulf of Mexico.** The plan has numerous references to regulatory measures such as using the TMDL process to implement basin-wide water quality criteria for point sources, which would be revised to account for the proposed numeric goals for reducing nitrogen according to the Gulf of Mexico needs. This agency had previously submitted comments on the draft TMDL rules. We also submitted a letter of concern to the EPA on August 15, 2000, regarding recent EPA proposals to change the Animal Feeding Operation/Confined Animal Feeding Operation (AFO/CAFO) rule. We wonder how these interrelated-programs will be coordinated with nutrient reduction measures taken to address hypoxia in the Gulf of Mexico.
8. **We are concerned that the EPA will use the "voluntary" nitrogen reduction goal in the draft action plan as justification for increasing regulatory control of agriculture via the AFO/CAFO, NPDES, and TMDL rules, and increased regulatory control of nonpoint sources via the TMDL and NPDES rules.** That would be in direct opposition to the intent of the P.L. 105-383, which states under section 606 that "(a) Nothing in this title shall be interpreted to adversely affect existing State regulatory or enforcement power which has been granted to any State through the Clean Water Act or Coastal Zone Management Act of 1972, and (b) Nothing in this title shall be interpreted to expand the regulatory or enforcement power of the Federal Government which has been delegated to any State through the Clean Water Act or Coastal Zone Management Act of 1972.
9. **We strongly feel that water quality criteria standards, and state priorities should continue to be set according to local and state water quality needs, especially in regards to any regulatory standards.** Since nitrogen is usually not a limiting nutrient for most fresh water systems, any increased actions to reduce nitrogen for Gulf of Mexico water quality needs should be made contingent on an adequate level of federal support for technical and financial assistance.
10. **We are opposed to imposing biological nitrogen removal for municipal sewage treatment plants, based on the Gulf of Mexico needs.** The economic analysis,

insufficient as it is, simply does not establish benefits that warrant the undoubtedly high costs of pursuing biological nitrogen removal for municipal sewage treatment plants. Imposing huge costs on the majority of point-source dischargers will probably have the effect of further limiting public funding for nonpoint source abatement activities, and/or increasing public pressure to regulate agricultural producers, which may well drive farmers out of business. Before we inflict a higher regulatory nitrogen standard for point sources, we believe it makes sense to find out the additional environmental gains that can be made with adequate federal and other public funding for voluntary, incentive-based partnerships with agriculture producers and other landowners to address non-point source needs. We do, however, support ensuring that all point source dischargers of nitrogen, air as well as water, are meeting their current standards.

11. **We strongly feel that any voluntary and/or regulatory efforts made on the basis of the Gulf of Mexico water quality needs must be contingent on adequate federal financial and technical support.** It is our understanding that one reason a numeric goal is being promoted is with the thinking that that will help justify federal budget requests for this purpose. We remind EPA and the Task Force that strong justification already exists for substantial increases in federal funding to meet state and local needs, not to mention the Gulf of Mexico needs. The USDA Natural Resources Conservation Service (NRCS) has conducted a workload analysis over the last three years, and that data indicates great need for additional federal funds. For example, the workload analysis indicates that Wisconsin has a shortfall of just over 90 conservation staff, for state and local needs. No doubt this shortfall would be greater if the needs for the Gulf of Mexico were factored in. In addition, it will be essential to have adequate cost-sharing to help farmers to pay for the needed conservation practices.
12. **Correspondingly, we are adamantly opposed to the proposed action to have EPA redirect the current 319 funds according to priorities based on a numeric goal for reducing nitrogen loading to the Gulf of Mexico.** The current level of 319 funding does not come anywhere close to meeting the state and local water quality needs to control phosphorus and sediment for fresh-water resources, much less addressing nitrogen reduction needs for the Gulf of Mexico. The federal level of support for nonpoint source abatement lags far behind the billions of dollars in grants historically given to municipalities for point-source abatement activities. It makes no sense to us to redirect the 319 funds to priorities based on needs for the Gulf of Mexico hypoxia, especially since there is no sound economic justification for doing so.
13. **It is essential to make sure that agricultural producers in the Mississippi River Basin have a level playing field with producers in other areas of the county.** We think it highly inappropriate for the EPA to forge ahead with completing the draft action plan until the next farm bill has passed. The upcoming federal farm bill will be an important opportunity to examine federal farm price support and commodity production policies. These policies have inadvertently increased environmental degradation brought on by increased use of nitrogen fertilizer and cropped acreage, in order to increase eligibility for loan deficiency payments. Many wildlife, environmental, and farm-related groups are

interested in crafting a new direction for the farm bill that will result in a “win-win” for both the environment and the farm economy. Certainly it would be appropriate the Task Force and each State and Tribe to engage these groups in considering how the next farm bill could make it more economically feasible for all agricultural producers to reduce edge-of-field losses (sub-surface as well as surface) of nitrogen, particularly nitrate, as well as encourage water infiltration and reduce peak runoff rates in large storms. These discussions will need to consider impacts to other resources. This includes potential benefit for fish and wildlife habitat, potential loss of prime farmland acres to other uses and related impacts to the local property tax base, and potential impacts to the local infrastructure of agricultural support businesses.

14. In the interim, the non-controversial aspects the proposed action plan could be pursued on a voluntary basis, regardless of whether the plan is fully in place. This includes continued research into the causes of hypoxia, and the development and implementation of adaptive monitoring and management measures. We also believe that substantial increase in federal financial support for all non-point source efforts in the Mississippi River Basin is easily justified in the next budget, whether it is based on the USDA NRCS workload analysis data, or on the proposed budget initiative in the plan, even without a numeric reduction goal for nitrogen.
15. We support the proposals to increase the number of producers and acres under voluntary nutrient management plans, and improve animal waste management practices, and would like to see additional federal funding for this purpose.
16. We question why the plan proposes to increase the number of acres in conservation tillage, as this does not necessarily reduce edge-of-field nitrogen runoff or reduce nitrate removal via drainage tiles. Also, conservation tillage may not be compatible with agricultural producers who want to minimize using the chemical herbicides and pesticides. We recommend that the specific reference to conservation tillage be replaced with a reference to increasing the number of acres that are under a “whole farm plan” that addresses edge-of-field nitrogen loss, as well as water infiltration and runoff management in high flow conditions. The specific conservation practices that would be needed for nitrogen control and water management are highly-dependant on the individual operation’s resource base and operator’s objectives.
17. We question the economic indicators of success/progress listed in the action plan that include the land area in crop production and agricultural output in numbers of animals and bushels of commodity crop. We do not understand whether it would be higher or lower numbers of these indicators would be seen as success, and also do not see the correlation with whether or not the agricultural producers are actually making money, or becoming less economically viable.
18. Similarly, we fail to see how tracking the number of listed 303(d) waters is an indicator of success. If the number of listed waters increases, is that a success because more TMDLs, NPDES, AFO/CAFO regulations will be imposed? Or, is it the number of

waters that fall off the list the indicator of success, since they apparently meet the nutrient reduction goals? Also, it would be more appropriate to track the number of acres under a whole farm plan that includes edge-of-field nitrogen control and water infiltration/runoff quantity in high flow conditions then to track acres of conservation tillage.

In summary, we have many concerns about the proposed action plan. However, we wish to stress that we are concerned about excessive levels of nitrogen reaching the Gulf of Mexico, and the resulting hypoxia. We support the intent of the law, which is to pursue an incentive-based partnership to focus on voluntary, cost-effective measures that address the problem. We are committed to continuing our participation in the ongoing discussions and development of the action plan.

Thank you for the opportunity to comment on the draft action plan.

Sincerely,



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Wisconsin Department of Agriculture, Trade, and Consumer Protection

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